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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000499

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SUBJECT: INTERPRETATION OF ARTICLES 54 AND 55: COUNCIL OF
REPRESENTATIVES DOES NOT NEED TO CONVENE WITHIN 15 DAYS

Classified By: POLITICAL COUNSELOR ROBERT S. FORD, FOR REASONS 1.4 (B)
AND (D).

¶1. (C) SUMMARY. Article 54 of the new Iraqi Constitution requires that the Presidency Council issue a decree within fifteen days of the certification of election results to convene the Council of Representatives (CoR). It does not require the CoR to convene within 15 days of the certification of results) although this is the popular interpretation among average Iraqis and the media. It may be reasonable, moreover, for the Presidency Council to impose some delay on the CoR's convocation, if it articulates a basis for doing so (e.g. logistical and security reasons). Presidency Council Chief of Staff Kamran Karadaghi told PolOff February 13 that President Talabani is willing to do what is necessary and call to convene the CoR. FM Zebari told PolCouns February 16 that the Kurds were in no hurry to see the CoR called into session. According to February 16 media reports, Talabani said that he would soon ask the heads of the parliamentary blocs to attend a meeting to agree on the date for the CoR to meet.

¶2. (C) SUMMARY CONTINUED. Article 55 expressly calls for the election of a Speaker and two Deputy Speakers in the CoR's first meeting. However, widespread political support to postpone the election of the Speaker (due to the packaging of positions in government formation) may reduce any criticism that flows from not following the legal requirement. In addition, Chief Judge Medhat's official government transition opinion states that the TAL remains in effect until the new government is formed and implies that the TNA remains the official legislature until government formation is complete. Thus, to the extent the COR meets, it should only do so in order to take government formation decisions) i.e., election of its Speaker and deputies, election of the Presidency Council, and vote of confidence on the PM candidate and his Council of Ministers. END SUMMARY

Convening the Council of Representatives (CoR)

¶3. (C) After certification of the election results, Article 54 mandates that the Presidency Council (PC) issue a decree within fifteen days to convene the Council of Representatives. This provision also permits one fifteen-day extension for issuance of the PC decree. Presumably, the PC would have the discretion to invoke that extension without consultation of any other governmental entities.

¶4. (C) The constitution is silent as to how quickly the PC actually must convene the CoR or whether the PC must state a specific date for the CoR's first meeting. However, both the drafters' intent and the text suggest that the PC's discretion should be limited. The drafters sought to avoid

the delays that resulted from the Transitional Administrative Law (TAL) government formation process) where there were relatively few deadlines) by establishing a more concrete government formation schedule under the constitution. In support of this view, the text requires a series of 15- and 30-day deadlines for most steps in the formation process. Nevertheless, because the constitution is silent, it may be reasonable for the PC to impose some delay on the CoR's convocation if necessary. Articulating a basis for doing so (e.g. logistical and security reasons) would help justify any such delay.

¶ 15. (C) Presidency Council Chief of Staff Kamran Karadaghi told PolOff on February 13 that President Talabani is willing to do what is necessary and call to convene the CoR. Karadaghi added that the outcome of the Shia Alliance vote surprised the Talabani camp and it needed some time to re-group and decide their approach to the remaining executive and cabinet positions. He said that negotiations for the deputy prime minister and deputy president positions will be complicated. Karadaghi acknowledged that Talabani must "call" to convene the CoR sometime before February 25.

¶ 16. (C) FM Zebari told PolCouns February 16 that the Kurds were in no hurry to see the CoR called into session. According to February 16 media reports, Talabani said, in response to a question at a press availability, that he would soon ask the heads of the parliamentary blocs to attend a meeting to agree on the date for the CoR to meet.

Selection of COR Speaker and Deputies

¶ 17. (C) Articles 54 and 55 require the CoR to elect in its
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first meeting, which is chaired by the eldest member, the CoR Speaker and two deputy Speakers by an absolute majority. If the positions of Speaker and deputy Speakers become intricately linked to the overall government formation process and a package of leadership positions, Iraqi political leaders may have no interest in filling these positions the first time the CoR actually meets.

¶ 18. (C) Thus, there may be a tension between the legal requirement and possible political realities. To address this tension, Iraqi leaders might emphasize the following points: (1) this first meeting is only a symbolic "convocation" of the CoR; (2) the CoR only will meet to take government formation decisions; and (3) the first official session will take place when the government is fully formed. While this approach may not meet the straightforward legal requirement of Articles 54 and 55, widespread political support to postpone the elections of the Speaker and deputies may reduce any criticism that flows from not following these provisions. This approach also has the advantage of meshing with Judge Medhat's theory of transition (see below).

Governing Law

¶ 19. (C) By its terms, the constitution does not come into effect until government formation is complete. Both the Embassy and the Iraqis interpret government formation to require the Prime Minister (PM) and Council of Ministers (COM) to assume office. In addition, Chief Judge Medhat's official government transition opinion states that the TAL remains in effect until the new government is formed) an opinion with which Embassy Legal agrees - and implies that the TNA remains the official legislature until government formation is complete.

¶ 10. (C) Thus, even after the COR has had its symbolic convocation, the TNA would appear to remain the official

legislature until the PM and COM assume office. To the extent the COR meets, it should only do so in order to take government formation decisions, i.e. election of its Speaker and deputies, election of the Presidency Council, and vote of confidence on the PM candidate and his Council of Ministers.

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